

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROBERTO DURAND,

Plaintiff,

v.

MILKE,

Defendant.

Case No. 3:22-cv-00153-RCJ-CSD

ORDER

Plaintiff Roberto Durand brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Ely State Prison. (ECF No. 1-1.) On April 13, 2022, this Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee for a civil action on or before June 13, 2022. (ECF No. 5 at 2.) The Court warned Plaintiff that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis*, including an inmate account statement for the previous six-month period, or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 3.) That deadline expired and Plaintiff did not file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee.

Because Plaintiff submitted several incomplete applications to proceed *in forma pauperis*, the Court considered meaningful alternatives to dismissal and issued another order granting Plaintiff one final opportunity to submit an inmate account statement for the previous six-month period on or before August 5, 2022. (ECF No. 8.) That deadline expired and Plaintiff still has not filed an inmate account statement for the previous six-month period or paid the full \$402 filing fee. Nor has Plaintiff asked for an extension.

1 Instead, Plaintiff filed yet another incomplete application to proceed *in forma pauperis*.
2 (ECF No. 9.)

3 **I. DISCUSSION**

4 District courts have the inherent power to control their dockets, and “[i]n the
5 exercise of that power, they may impose sanctions including, where appropriate . . .
6 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
7 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court
8 order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.
9 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
10 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th
11 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to
12 dismiss an action on one of these grounds, the Court must consider: (1) the public’s
13 interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket;
14 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
15 cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
16 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
17 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

18 The first two factors, the public’s interest in expeditiously resolving this litigation
19 and the Court’s interest in managing its docket, weigh in favor of dismissal of Plaintiff’s
20 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
21 because a presumption of injury arises from the occurrence of unreasonable delay in filing
22 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
23 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
24 cases on their merits—is greatly outweighed by the factors favoring dismissal.

25 The fifth factor requires the Court to consider whether less drastic alternatives can
26 be used to correct the party’s failure that brought about the Court’s need to consider
27 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
28 that considering less drastic alternatives *before* the party has disobeyed a court order

1 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
2 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
3 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court’s
4 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
5 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
6 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
7 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
8 F.2d 1421, 1424 (9th Cir. 1986).

9 Because this action cannot realistically proceed until and unless Plaintiff either files
10 a fully complete application to proceed *in forma pauperis* or pays the \$402 filing fee for a
11 civil action, the only alternative is to enter a third order setting another deadline. But the
12 reality of repeating two previous orders is that it often only delays the inevitable and
13 squanders the Court’s finite resources. The circumstances here do not indicate that this
14 case will be an exception. In both of its previous orders, the Court instructed Plaintiff that
15 he must file an inmate account statement for the previous six-month period. (ECF Nos.
16 5, 8.) Following the Court’s latest order, Plaintiff did not file a request for an extension of
17 time or indicate that he was having difficulty securing an inmate account statement for the
18 past six months. Instead, Plaintiff ignored the Court’s order and filed another incomplete
19 application to proceed *in forma pauperis*. (ECF No. 9.) Setting a third deadline is not a
20 meaningful alternative given these circumstances. So, the fifth factor favors dismissal

21 **II. CONCLUSION**

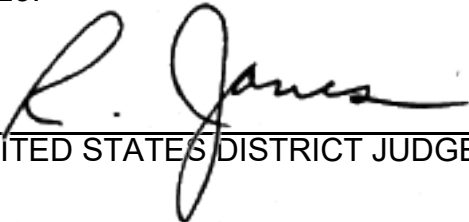
22 Having thoroughly considered these dismissal factors, the Court finds that they
23 weigh in favor of dismissal.

24 IT IS ORDERED that this action is dismissed without prejudice based on Plaintiff’s
25 failure to file a fully complete application to proceed *in forma pauperis* or pay the full \$402
26 filing fee in compliance with this Court’s April 13, 2022 and July 6, 2022, orders.

1 IT IS FURTHER ORDERED the Clerk of Court is directed to enter judgment
2 accordingly and close this case. No other documents may be filed in this now-closed
3 case. If Plaintiff wishes to pursue his claims, he must file a complaint in a new case.

4 IT IS FURTHER ORDERED that Plaintiff's pending motions (ECF Nos. 6, 7, 9) are
5 denied as moot.

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7 DATED THIS 18th day of January 2023.

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9 
10 UNITED STATES DISTRICT JUDGE
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